

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on January 22, 2003 at 3:45 P.M., in Room 173 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Rep. Arlene Becker, Vice Chairman (D)
Rep. Mark Noennig, Vice Chairman (R)
Rep. Tom Facey (D)
Rep. Ray Hawk (R)
Rep. Daniel S. Hurwitz (R)
Rep. Larry Jent (D)
Rep. Penny Morgan (R)
Rep. Holly Raser (D)
Rep. Don Roberts (R)
Rep. Ron Stoker (R)
Rep. Jonathan Windy Boy (D)

Members Excused: Rep. Steven Gallus (D)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
CJ Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp refers to material immediately following.

Committee Business Summary:

Hearing & Date Posted: HB 340, 1/16/2003; HB 341,
1/16/2003

Executive Action: HB 121

HEARING ON HB 340

Sponsor: REPRESENTATIVE JOAN ANDERSEN, HD 23, FROMBERG

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 0 - 6}

REP. JOAN ANDERSEN said that she is bringing this bill forth because of a situation that her husband went through when his aunt that he was taking care of died. Her husband was the guardian of this aunt, but he did not oversee her financial affairs. His responsibilities ended when she died, and before she died the court gave him permission to arrange for her funeral. When she died his responsibilities ended, and he could not make the funeral arrangements even though the court gave him permission. Her body was in the funeral home for two weeks before the funeral was finally arranged. This bill will change the final disposition of a person. Her husband was not allowed access to his aunt's personal effects which were stored in the nursing home for about two weeks. When they were finally able to claim her belongings, they were charged two weeks rent.

Proponents' Testimony: none

Opponents' Testimony: none

Questions from Committee Members and Responses:

REP. STOKER asked **REP. ANDERSEN** how this fits in with living wills. **REP. ANDERSEN** said this will not override those circumstances, and in his situation the aunt did not have a will.

REP. HAWK asked if this included personal effects, such as a bank account or a safety deposit box. **REP. ANDERSEN** said it is the intent that this bill takes care of personal effects only, such as clothing, furniture, and other personal items. Her husband wasn't able to access the money in his aunt's account. This bill only deals with personal effects, not with money.

REP. HAWK asked **REP. ANDERSEN** "What if the guardian is the last person alive, should the money issue be addressed in the bill?"

REP. ANDERSEN said that she will speak with Ms. Fox in regard to that question.

REP. HURWITZ asked **REP. JENT** if there was anything legal that would change this. **REP. JENT** said he didn't think so, but the intent is to give the guardian power upon death.

REP. ANDERSEN said that **REP. NOENNIG** had been her husband's attorney, and he has been very helpful with this bill. He worked with Ms. Fox to make sure the language and other issues are addressed in this bill.

Closing by Sponsor:

REP. ANDERSEN said that guardians for minors are also included in this bill. She said there are 121,000 citizens in Montana that are over the age of 65, so there is a possibility that other Montanan's will go through this situation.

HEARING ON HB 341

Sponsor: REPRESENTATIVE JOAN ANDERSEN, HD 23, FROMBERG

Opening Statement by Sponsor:

REP. JOAN ANDERSEN said that this bill is being brought to the committee at the request of the Legacy Legislature. This bill is a request for \$240,000 over the next two years for additional hours and money for trained personal ombudsman instead of creating new positions. The role of the Ombudsman is to monitor care, develop legal services, and ensure a good quality of life for the elderly.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 16.1 - 24}

Harry Smith, Retired Carroll College Professor, AARP member, said there are 136,000 AARP members in Montana who support this bill. There is a need and that need equates to people. There are more senior citizens now and they will need the care of the Ombudsman. These services provided by the Ombudsman is a resource that is invaluable in the senior citizen's last days.

Anna Rolando, Ombudsman, said that the services which they provide are federally-mandated. There are 42 ombudsman throughout the state that equate to 5.5 FTEs. The cuts in this program will be reflected in the personal care of the elderly. It is important to make sure that the elderly are being taken care of adequately. Currently, the Ombudsman Program strives to schedule one visit per month at the facilities, and that is often not met because of the lack of hours and man power.

Opponents' Testimony: none

Informational Witness:

Charlie Rehbein, DPHHS-Aging Services, said he is available if there are any questions that need to be answered.

Questions from Committee Members and Responses:

REP. HAWK asked Mr. Rehbein if they received any federal dollars for this program with it being federally-mandated. **Mr. Rehbein** said they have asked Medicaid for reimbursement and are waiting for a ruling.

REP. HAWK asked Mr. Rehbein if they currently receive federal money. **Mr. Rehbein** said they do not at this time.

REP. MORGAN asked **REP. ANDERSEN** what they use to determine the dollar number needed for this service. **REP. ANDERSEN** said this bill was originally drafted to represent four FTEs per year.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 1.5}

REP. ANDERSEN said that it is much more effective to direct the money toward people who are currently trained and working.

REP. MORGAN asked **REP. ANDERSEN** if the program is designed for four FTEs per year, if the average salary for an ombudsman would be \$60,000 per year. **REP. ANDERSEN** said that would be the entire cost. The Ombudsman receive mileage, plus there are other costs besides salaries.

REP. STOKER asked Mr. Rehbein if his organization seeks help from other Ombudsman organizations, or if this a strictly mandated parameter that they are staying within. **Mr. Rehbein** said that the federal law states that they have to have an Ombudsman Program. He said they have worked with the Montana Senior Citizens Program and AARP to recruit volunteers who can be trained as ombudsman. It is hard to find volunteers because of what they have to deal with.

REP. STOKER asked Mr. Rehbein what the current budget is for the Ombudsman Program. **Mr. Rehbein** said that the budget is \$260,000, which includes the state office.

REP. NOENNIG asked Mr. Rehbein what the rationale is in the difference in money between the Ombudsman Program and the Mental Health Ombudsman Program. **Mr. Rehbein** referred the question to

Robin Homan, SLTC Ombudsman-DPHHS, said there is a big difference between the Mental Health Ombudsman and the State Long Term Care Ombudsman Program. The Mental Health Ombudsman Program is provided through the Governor's Office, and it is not a federally funded program. The Ombudsman Program is federally-mandated and they require visitations to every facility. They also provide legal services to long-term care residents. Their services encompass the entire state at the local level, not just provided out of a single office at the state level, and that is the biggest difference in the budget of the two programs.

REP. NOENNIG asked Robin Homan if the number of people in her office is a result in the increase of services provided, or more people that need the services. **Ms. Homan** said that it is a combination of both. There has been an explosive increase in the number of assisted living facilities in the state in the last three to five years, and these are also by federal mandate.

REP. NOENNIG asked Robin Homan how many people in the state are using the Ombudsman Program. **Ms. Homan** said that the numbers have increased greatly.

REP. MORGAN asked Mr. Rehbein if this program was an unfunded mandate by the federal government. **Mr. Rehbein** said that \$240,000 of the \$260,000 is federal funds, and the rest is general funds.

REP. RASER asked Mr. Rehbein how long has it been since they put in the request to have Medicaid match their funds. **Mr. Rehbein** said they put the request in last fall, and have been placed on hold.

REP. RASER asked Mr. Rehbein if they have received any response at this time. **Mr. Rehbein** said, "No, they have not."

REP. ROBERTS asked Ms. Homan if her responsibility is to the state, or to the resident. **Ms. Homan** said that she is a state employee, but she is the only one. She said that all the statewide Ombudsman are contracted out. She certifies the Ombudsmen, but they are employees of the long-term care facilities. **Ms. Homan** said the Ombudsmen represent the patients.

REP. HAWK asked Mr. Rehbein if the current budget of \$240,000 is from the federal government, and \$20,000 from the general fund. **Mr. Rehbein** said, "Yes."

{Tape: 1; Side: B; Approx. Time Counter: 15.6 - 19.1}

REP. HAWK asked Mr. Rehbein if it is correct that the Ombudsman Program wants an additional \$240,000 to fund four more FTE, and does this money have to come out of the general fund. **Mr.**

Rehbein said that he is only here to provide information. He said it is not in the Governor's Office budget, and referred the question to **REP. ANDERSEN**. **REP. ANDERSEN** said she was not approached by the department, but is carrying the bill for the Legacy Legislature. When the Legacy Legislature drafted this bill they decided it would be better to increase the number of hours of the current employees instead of creating new jobs. She stated there is no request for new FTEs in this bill.

REP. HAWK asked **REP. ANDERSEN** if they were asking the federal government for part of the \$240,000. **REP. ANDERSEN** said that it is her understanding that the Legacy Legislature is asking for general fund money.

REP. HURWITZ asked Mr. Rehbein how much private money goes into this fund. **Mr. Rehbein** said that all of the money is either federal, state or county money. The private person does not pay anything for this service.

REP. RASER asked Mr. Rehbein if there are grants available for this program. **Mr. Rehbein** said they receive a block grant from the federal government under the Elderly Americans Act. All of this money is returned to the local communities.

REP. RASER asked Mr. Rehbein if there are other grants available that they could apply for beside the federal grants they are already receiving. **Mr. Rehbein** said they have looked into it, but they have not found anything yet.

Closing by Sponsor:

REP. ANDERSEN said this is an important program because there are people in nursing homes that do not have someone to look out for them and to take care of them. She distributed a letter from Karen Erdie (Exhibit 1). **REP. ANDERSEN** urged a Do Pass on HB 341.

EXHIBIT (huh13a01)

EXECUTIVE ACTION ON HB 121

Motion: **REP. RASER** made the motion **TO OPEN HB 121 FOR DISCUSSION**.

Motion: **REP. RASER** moved to **ADOPT THE AMENDMENT**.

Discussion:

{Tape: 1; Side: B; Approx. Time Counter: 25.4 - 26.3}

REP. RASER explained what the amendment *Exhibit 2) would do.

EXHIBIT (huh13a02)1

Susan Fox addressed the intent of another amendment (Exhibit 3) to the committee.

EXHIBIT (huh13a03)

Susan Fox said the money is kept aside for the purpose of Mental Health Services only. This amendment charges the legislature to use the money that is received for Mental Health Services instead of going to the general fund and being reappropriated.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 3}

REP. NOENNIG asked **REP. RASER** if she had discussed the amendment with the sponsor. **REP. RASER** responded that she did not.

REP. FACEY said that the amendment is taking out the words "Mental Health Manage Care Program". **REP. FACEY** said he supported this amendment.

REP. FACEY asked **Susan Fox** if there is a special revenue account for mental health, or will the committee have to make one. **Ms. Fox** said that she did not know.

REP. FACEY said that he did not want the money put into the special state revenue fund.

Mick Robinson, DPHHS, said a new special account isn't needed. The department is only looking at the Medicaid receipts. If there is money coming in from mental health patients, it should go back to the mental health system. Medicaid goes into the general fund and then it is appropriated back to the various facilities. The concept of the amendment is understood, but it is not going to accomplish what it is expected to do.

REP. MORGAN asked **Mick Robinson** if it is feasible to say that if the money is an appropriation out of the general fund, is there a better chance of receiving matching federal dollars. **Mr.**

Robinson said the money received from the federal government is based on whether the person is in the program. The facility itself is not funded by the federal dollars.

REP. MORGAN asked Mick Robinson if there are other federal dollars besides medicaid and medicare. **Mr. Robinson** said there is no avenue for additional federal dollars.

REP. RASER asked Mick Robinson how much money are they talking about. **Mr. Robinson** said the department is talking about \$8 million, and Medicaid is approximately \$3 million.

REP. RASER said she is concerned that the money going into Medicaid that collects \$3.1 million, will go back into the general fund and not be appropriated back to the Mental Health Program. She asked Mick Robinson if this money goes back to mental health or if it can be appropriated to other programs. **Mr. Robinson** said there are no guarantees that it will fund the specifics of this bill for the operation of the facilities.

REP. RASER said that her intent with this amendment is to protect the mental health appropriations.

REP. RASER asked Mick Robinson if the funds that are coming from mental health will be protected and go back to mental health. **Mr. Robinson** said that is correct with this amendment. It would indicate that the money received from medicaid would be subject to appropriations for mental health purposes.

REP. RASER asked **Susan Fox** if the money that is in this account could either be appropriated for mental health or not appropriated at all. **Ms. Fox** said if the funds were not appropriated it would stay in the account, but she didn't know how long it will stay in that account before it is reverted to the general fund.

REP. RASER said that the intent of the amendment is to make sure the money goes back to Mental Health Programs.

REP. STOKER said that this came in as an accounting change. Funds should be used for Mental Health Programs. The accounting request of \$5.9 million moves to the general fund. What needs to be done is to secure account lines to mental health to matching funds for Medicaid.

REP. BECKER said that having worked in two institutions which bill Medicaid, the medicaid payments do not cover the cost of the care the patients are receiving. She said, "we are talking about money that is not going to be there."

{Tape: 2; Side: A; Approx. Time Counter: 23 - 25.2}

REP. NOENNIG said the intent of amendment is good, but the bill is going back to the Appropriation's Committee where they will amend it back to the way it originally was. He said "we should not mess around with this."

REP. STOKER said that the cash flow into this account is from different sources that total approximately \$7 million. After it hits \$1.8 million and pay the bonds, the rest is reverted to general funds in the new accounting procedure where it loses its identity as underfunded medicaid to meet the current medicaid defined expenses. He said once the two hospitals are taken care of and the bond issue is handled, the hospitals are taken care of through appropriations.

Vote: **REP. RASER's motion to adopt the amendment (Exhibit 2).**
FAILED 6-7 with REPS BECKER, FACEY, RASER, STOKER, and WINDY BOY voting aye. Roll call vote was taken.

Susan Fox informed the committee this amendment was proposed by the department. She said for accounting purposes this amendment will adjust itself with the fiscal year.

REP. NOENNIG called the question on the amendment.

Motion/Vote: **REP. MORGAN moved TO ADOPT AMENDMENT (Exhibit 3).**
Motion carried 13-0. Voice vote was taken .

Motion/Vote: **REP. NOENNIG moved HB 121 DO PASS AS AMENDED**
CARRIED 12-1 WITH REP. HAWK voting no. Voice vote was taken.

Exhibits 4 and 5 were handed to the secretary for the record, but they were not referred to.

EXHIBIT (huh13a04)

EXHIBIT (huh13a05)

CHAIRMAN THOMAS adjourned the committee hearing.

ADJOURNMENT

Adjournment: 5:15 P.M.

REP. BILL THOMAS, Chairman

CJ JOHNSON, Secretary

BT/CJ

EXHIBIT (huh13aad)